CIVIL WRIT JURISDICTION CASE No.4576 OF 1989

In the matter of an application under Articles 226 & 227 of the Constitution of India.

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1. Jamuna Mahto, son of late Sukhdeo Mahto.
2. Bhaju Mahto, son of Shiv Mahto
3. Chandradeep Mahto, son of Karbari Mahto
4. (a) Baijnath Mahto
   (b) Deena Mahto
   Both sons of Rameshwar Mahto.
5. Dukhit Mahto, son of late Deodhari Mahto.
6. Ganesh Mahto, son of late Lakhan Mahto.
7. (a) Ramayan Mahto
   (b) Ramdeo Mahto
   Both sons of Laldhari Mahto
8. (a) Ram Das Mahato
   (b) Subhash Mahto
   Both sons of Lotan Mahto.
9. Amir Mahto son of Anant Mahto
10. Ram Ekbal Mahto, son of late Shiv Nandan Mahto
11. Punikal Mahto son of late Dukhan Mahto
12. Punit Mahto son of late Gariba Mahto
13. Ram Balak Mahto son of late Badri Mahto
14. Tapeshwar Mahto son of late Suchhit Mahto
15. Suraj Mahto son of late Kishun Mahto
16. Jaglal Mahato, son of late Kailash Mahto
17. (a) Congress Mahto
    (b) Akhilesh Mahto
    Both sons of late Adalat Mahto
18. Suresh Rai, son of late Sita Ram Rai
19. Durga Mahto son of late Satya Narain Mahto
20. Bhuar Mahto son of Ram Bilas Rai
21. All residents of Village Shankarpur, Nomia toil, P.O. & P S Dighwara, District – Saran, at present residing at Village Fharhada, P.O. & P S Dighwara, District –Saran

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---------- Petitioners

Versus

1. The State of Bihar
2. Collector, Saran at Chapra.
3. Sub-divisional Officer, (Civil), Sadar, Saran at Chapra.
4. Deputy Collector, Land Reforms, Sadar, Saran at Chapra.
5. Circle Officer, Dighwara, Saran

---------- Respondents

For the Petitioners: M/S. S P Singh, Sr. Advocate, S C P Sinha, M P Sinha, Rajendra Kishore Prasad, Ratan Kumar Sinha and Madhukar Pandey.

For the Respondents: Mr. Rana Ishwar Chandra, JC to GP 13.

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

Ajay Kumar Tripathi,J

All the petitioners of the present writ application are aggrieved by the conduct and action of the official respondents specially the revenue authorities of refusing to accept rent for the land which they claim to be coming in possession by virtue of settlement made in their favour by the ex-landlord long before vesting of the Estate. It is their case that different Jamabandi had been opened in their favour details of which have been indicated in the writ application and thereafter rent used to be paid by them regularly and also accepted by State authorities till a kind of refusal was made some time in the year 1977-78.

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2. Learned Senior Counsel appearing on behalf of the petitioners has many submissions to make based on the settled principles in this regard on the present dispute and the issues but the Court may not delve into all those issues in the present case, looking at the limited order which this Court is willing to pass in the present case at this stage.

3. When the writ application was filed way back in the year 1989 it seems that after considering various submissions made on

behalf of the parties the Bench in its order dated 7.2.1990 directed the State to file a supplementary counter affidavit. The State was to furnish details and names of persons whose name came to be recorded in Register-II with respect to land in question. Direction was also issued as to the date when the names of these petitioners were struck off from Register II and while doing so any kind of order cancelling the Jamabandi was issued by the competent authorities. If an order of the kind is in existence they were directed to bring on record as an annexure. The affidavit was also to state whether the cancellation of Jamabandi was done after issuance of notices to the petitioners. The writ application has remained pending adjudication for many a years. When it is taken up today the records do not certify that a kind of affidavit in this regard has been filed by the State.

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4. The direction dated 7.2.1990 has significant bearing on the dispute raised by the petitioners. Primarily being that prima facie if the petitioners demonstrate that there are records in existence showing the so-called Jamabandi in their favour having been in operation for decades together and a kind of existence in this regard having been acknowledged by the revenue authorities by issuing rent receipts then they had some right and interest which they came to acquire over a period of time. If the State wanted to divest them of that right or title then they are entitled to some kind of notice, hearing and an order in this regard either accepting the status or rejecting the claim. If it is not done then it is not only violation of rule of natural justice but it also deprives them of their right to

challenge an order adverse to them in case it comes to be passed by an appropriate forum.

5. In absence of any clear cut affidavit or response coming from the State, the Court has to go with the materials and the averments which have been made by the petitioners in the writ application. Their right or their grievance raised in the writ application cannot be brushed aside lightly.

6. Though in the affidavit filed on behalf of the State there is something to show that some kind of enquiry was carried out and they could not identify any land on which the petitioners claim their actual physical possession and based on the same the revenue authorities have refused to accept rent from the petitioners but the above assertion or averment made on behalf of the State is not sufficient to throw the writ application out of the petitioners.

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7. In the totality therefore the Court comes to an opinion that the petitioners do have right of being issued a notice, thereafter a hearing and then an adjudication to their right whether Jamabandi operating in their favour can be taken away in the fashion and manner in which it has been done by the revenue authorities.

8. The writ application is allowed with a direction upon respondent no.5 the Circle Officer, Dighwara, Saran to hereby issue notice to the petitioners, give them opportunity of hearing and thereafter pass an order in consonance with law in this regard. Till an adjudication of the kind is made by respondent no.5 it is hereby clarified that the petitioners shall not be disturbed of their actual

physical possession if they continue to be in occupation of the land in question as has been asserted by them in several affidavits including the last supplementary affidavit filed by them on 22.7.2008.

9. The writ application is allowed but without any cost.

(Ajay Kumar Tripathi, J)

Patna High Court:
Dated, the 7th November, 2008.
R K Pathak (NAFR)

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